

Laborers' International Union of North America, AFL-CIO, Local 104 and ACMAT Corporation and Sheet Metal Workers' International Association, AFL-CIO and Its Local 28. Case 2-CD-760

December 26, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

On April 9, 1990, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief. In response, the General Counsel filed the brief submitted to the judge.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Laborers' International Union of North America, AFL-CIO, Local 104, New York, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

Geoffrey Dunham, Esq. and David E. Leach III, Esq., for the General Counsel.

Stephen Davis, Esq. and Wilfred L. Davis & Stephen Davis P.C., for Laborers.

Bryon Marsh, for ACMAT Corporation.

Donald W. Fisher, Esq., for Sheet Metal Workers.

Clifford C. Ryan, Esq., for Metropolitan Life Insurance Company.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in New York, New York, on February 14, 1990. The charge was filed on September 13, 1988, and the complaint was issued on August 9, 1989. The complaint alleges that the Respondent violated Section 8(b)(4)(ii)(D) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT

I. JURISDICTION

ACMAT Corporation is engaged in the business of asbestos removal. Annually it derives gross revenues in excess of

\$500,000 and purchases and receives goods valued in excess of \$50,000 from suppliers located outside the State of New York. I therefore find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The parties agree and I conclude that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

On June 15, 1989, the Board in a decision reported at 295 NLRB 692 (1989), issued a Decision and Determination of Dispute in this matter after a hearing held pursuant to Section 10(k) of the Act. The Board concluded that there was reasonable cause to believe that a jurisdictional dispute existed. The Board further concluded that certain asbestos removal work being performed at the Pan Am Building in New York City should be assigned to ACMAT's own employees (who happened to be represented by Local 28 Sheet Metal Workers' International Association), rather than to employees represented by the Respondent.

In the context of the 10(k) hearing, the Respondent contended that the Sheet Metal Workers' International Association should be precluded from representing the employees of ACMAT because of a conflict of interest resulting from a substantial financial investment in the Company by that Union's pension fund. At the 10(k) hearing, the Respondent made an offer of proof on this point and later urged the Board to reopen that hearing for the purpose of receiving evidence on that issue. The Board refused and concluded *inter alia* at footnote 2, that even if the offer of proof was true, it was not relevant to the disposition of the case because the "issue in this proceeding is the identity of the employees entitled to perform the work, not the identity of their representative."

The Respondent repeated its contention regarding the alleged conflict of interest in the present proceeding. In furtherance thereof, it issued subpoenas to ACMAT and to the Sheet Metal Workers' International Association and its pension fund to produce records which the Respondent felt would prove its point. I granted petitions to revoke these subpoenas because I believe that the Board's previous conclusion regarding the relevancy of this contention is dispositive. Consequently, the Respondent in this hearing made the same offer of proof as it made in the previous 10(k) hearing.

The credible and uncontroverted evidence presented in the unfair labor practice hearing established the following:

1. In August or early September 1988, ACMAT pursuant to a contract with Cross and Brown Company, an affiliate of Metropolitan Life Insurance Company, commenced the work of removing asbestos from certain floors of the Pan Am Building in New York City.

2. That ACMAT pursuant to a collective-bargaining agreement with the Sheet Metal Workers' International Association, AFL-CIO assigned the foregoing work to employees whom it hired and who were represented by Local 20 of the Sheet Metal Workers' International Association.

3. That on September 6, 1988, representatives of the Respondent demanded that ACMAT hire members of the Respondent and assign to them the work of removing asbestos from the Pan Am Building.

4. That on September 6, 1988, representatives of the Respondent in furtherance of the aforesaid demand, threatened to engage in picketing at the jobsite if Respondent's demand was not acceded to.

5. That on September 8, 1988, representatives of the Respondent in furtherance of its work assignment demand, threatened representatives of Cross and Brown that unless its demand was met, the Respondent would cause a work stoppage and engage in picketing at the building.

6. The complaint alleges and the answer admits that the Respondent has not been certified by the Board as the collective-bargaining representative of any of the employees performing the work described above, nor has the Board issued any order determining that the Respondent is the bargaining representative of the employees who performed the work.

7. The complaint alleges and the answer admits that the Respondent, on August 1, 1989, notified the Regional Director of Region 2 that it would not comply with the Board's award which issued on June 15, 1989.

CONCLUSIONS OF LAW

1. ACMAT Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, Laborers' International Union of North America, AFL-CIO, Local 104, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated, and is violating, Section 8(b)(4)(ii)(D) of the Act by threatening employers with an object of forcing and requiring ACMAT to assign the disputed work to employees who are members of or represented by Respondent.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Laborers' International Union of North America, AFL-CIO, Local 104, its officers, agents, and representatives, shall

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from threatening, coercing, or restraining ACMAT Corporation or any other employer, with an object of forcing or requiring ACMAT to assign the work of asbestos removal or abatement at the Pan Am Building to employees who are members of or represented by the Respondent rather than to employees who are represented by Sheet Metal Workers' International Association, AFL-CIO, Local 28.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten, coerce, or restrain ACMAT Corporation or any other employer, with an object of forcing or requiring ACMAT to assign the work of asbestos removal or abatement at the Pan Am Building to employees who are members of or represented by us, rather than to employees who are represented by Sheet Metal Workers' International Association, AFL-CIO, Local 28.

LABORERS' INTERNATIONAL UNION OF NORTH
AMERICA, AFL-CIO, LOCAL 104